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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B5

Date:

Office: NEBRASKA SERVICE CENTER

FILE:

JUL 26 2011

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the preference visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A).

The petitioner describes itself as an “online flower/plants retails/drop shipper.” It seeks to employ the beneficiary permanently in the United States as a database engineer. As required by statute, a labor certification approved by the Department of Labor accompanied the petition. The director determined that the petitioner had not demonstrated its continuing ability to pay the proffered wage beginning on the priority date of the visa petition and denied the petition accordingly.

While the record of proceeding contains a previously executed Form G-28, Notice of Entry of Appearance as Attorney or Representative for the petitioner’s representative submitted with the appeal,¹ the Form I-290B appellate form was signed and appears to have been filed by the beneficiary. United States Citizenship and Immigration Services’ (USCIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary’s behalf, from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B).

As the appeal was not properly filed it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).²

ORDER: The appeal is rejected as improperly filed.

¹ The Form G-28 submitted with the appeal is dated November 30, 2007. The appeal was filed on September 12, 2008.

² Additionally, evidence has come to light that the status of the petitioning business in this matter has been suspended. See attached print-out from the California Secretary of State official website which indicates that the business is suspended. <http://kepler.sos.ca.gov/cbs.aspx>. If the petitioning business is no longer an active business, the petition and its appeal to this office have become moot. Where there is no active business, no *bona fide* job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. Additionally, even if the appeal could be otherwise sustained, the petition’s approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer’s business in an employment-based preference case. In any further filings, the petitioner would need to establish that it is in good standing or submit other proof that the business is not suspended and is currently in active status.

**Business Entities (BE)**

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Business Entity Detail

Data is updated weekly and is current as of Friday, July 15, 2011. It is not a complete or certified record of th

Entity Name:	
Entity Number:	
Date Filed:	08/17/1998
Status:	SUSPENDED
Jurisdiction:	CALIFORNIA
Entity Address:	
Entity City, State, Zip:	
Agent for Service of Process:	
Agent Address:	
Agent City, State, Zip:	

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Corporations Code **section 2114** for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more [Information Requests](#).
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